

Message Text

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C O N F I D E N T I A L USUN NEW YORK 02981

E.O. 11652: GDS
TAGS: AORG, UN
SUBJECT: LUMP-SUM PENSION REIMBURSEMENT CASE

REF: USUN 2936

1. IN RESPONSE TO MISOFF'S INQUIRY, JOHN SCOTT, WHO IS APPARENTLY SERVING AS ACTING LEGAL COUNSELOR IN SUY'S ABSENCE, SAID HE HAS SENT A MEMORANDUM TO USYG DAVIDSON WHICH MAKES THE FOLLOWING POINTS: (A) IT IS UNCLEAR WHETHER THE ADMINISTRATIVE TRIBUNAL WILL GRANT THE SYG'S REQUEST FOR AN ADVISORY OPINION. HARDY, THE SECRETARY TO THE ADMINISTRATIVE TRIBUNAL, HAS INFORMED THE TRIBUNAL'S MEMBERS OF THE REQUEST. FYI: WE HAVE REASON TO GUESS THAT HARDY, A PARTICULARLY CAUTIOUS PERSON, IS LIKELY TO HOLD AS A PERSONAL VIEW THE OPINION THAT THE TRIBUNAL SHOULD NOT GRANT THE REQUEST BUT, INSTEAD, AWAIT AN APPLICATION ALLEGING NON-OBSERVANCE OF THE CONTRACT OR TERMS OF EMPLOYMENT OF A STAFF MEMBER OF THE SECRETARIAT. END FYI. (B) SCOTT HAS RECOMMENDED THAT IF THE TRIBUNAL GRANTS THE REQUEST, ALL INTERESTED PARTIES, INCLUDING THE STAFF COMMITTEE AND MEMBER STATES SHOULD BE ALLOWED TO FILE STATEMENTS OF THEIR VIEWS.

2. MISOFF NOTED THAT CONSIDERATION WAS BEING GIVEN TO THE UNITED STATES FILING AN AMICUS BRIEF AND THUS
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EXPRESSED APPRECIATION FOR SCOTT'S POSITION. FORMER ASKED SCOTT'S ASSESSMENT OF LIKELIHOOD THAT, IF THE CASE CAME BEFORE THE TRIBUNAL IN THE USUAL MANNER RATHER THAN BY WAY OF AN ADVISORY OPINION, THE TRIBUNAL WOULD ACCEPT AN AMICUS STATEMENT. SCOTT SAID THE MATTER WAS UNCLEAR. THE TRIBUNAL'S RULES OF PROCEDURE (ART'S XIX ET SEQ.) SPEAK OF "INTERVENTION" BY "A PERSON" OR "PERSONS."

CERTAINLY THE "INTERVENTION" BY A MEMBER STATE WOULD NOT BE AS OF RIGHT. HE SAID THAT IN THE PAST POTENTIAL INTERVENTIONS BY MEMBER STATES HAVE BEEN DISCOURAGED BY THE SECRETARIAT IN AN EFFORT TO DEPOLITICIZE TRIBUNAL PROCEEDINGS. HE DID NOT DISAGREE, HOWEVER, WHEN MISOFF NOTED THE PARTICULAR RELEVANCE OF USG VIEW TO A JUDICIAL DETERMINATION OF THE SUBSTANCE OF THE MATTER IN ISSUE.

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